



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

KINGWOOD MEDICAL CENTER  
C/O HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE STE 1288  
HOUSTON TX 77098-3926

#### **Carrier's Austin Representative Box**

#15

#### **Respondent Name**

INDEMNITY INSURANCE CO OF  
NORTH AMERICA

#### **MFDR Date Received**

DECEMBER 3, 2007

#### **MFDR Tracking Number**

M4-08-2226-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated November 30, 2007:** "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Gallagher Bassett Services, Inc., Inc. on behalf of Pizza Hut do not conform to the reimbursement section of Rule 134.401..."

**Amount in Dispute:** \$40,037.06

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated December 27, 2007:** "The Requestor asserts it is entitled to reimbursement in the amount of \$58589.77, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement...There is no evidence submitted by the hospital demonstrating that the services provided by the hospital were unusually extensive...there is no evidence that the services provided by the hospital were unusually costly to the hospital..."

**Response Submitted by:** Flahive, Ogden & Latson

**Respondent's Supplemental Position Summary Dated September 7, 2010:** "We have escalated the bill for additional review and it remains in process at this time. We will submit a supplemental response upon completion of the pending review."

**Response Submitted by:** Gallagher Bassett Services, Inc.

**Respondent's Supplemental Position Summary Dated September 12, 2011:** "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)..."

**Response Submitted by:** Flahive, Ogden & Latson

## SUMMARY OF FINDINGS

| Disputed Dates                                   | Disputed Services           | Amount In Dispute | Amount Due |
|--|-----------------------------|-------------------|------------|
| February 9, 2007<br>through<br>February 14, 2007 | Inpatient Hospital Services | \$40,037.06       | \$0.00     |

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### Explanation of Benefits

- A – Preauthorization required but not requested
- C – Negotiated contract price
- F – Fee guideline reduction
- F – Fee guideline MAR reduction
- Review Pending-Charge will be considered when the invoice is forwarded to our office.
- G – Unbundling
- 04988 – Review Pending-Charge will be considered when the invoice is forwarded to our office
- D – Duplicate bill
- Coventry contract status indicator 01 – Contracted Provider
- DISALLOWED – report included per official medical fee schedule
- N – Not appropriately documented
- B13-Previously paid. Payment for this claim/service may have been provided in a previous payment.
- O-Denial after reconsideration.

### Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

### Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the

admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$84,912.71. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
4. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
  - (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
  - (ii) the hospital's usual and customary charges; and
  - (iii) reimbursement as set out in section (c) of this section for that admission
- In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "C – NEGOTIATED CONTRACT PRICE; and COVENTRY CONTRACT STATUS INDICATOR 01 – CONTRACTED PROVIDER." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Indemnity Insurance Co. of North America and Kingwood Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal \$84,912.71.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- According to the explanation of benefits, the respondent raised the issue of "A – Preauthorization required but not requested." The respondent did not maintain this position because payment was issued in the amount of \$18,552.71; the division finds no documentation to support a preauthorization issue exists in this dispute.
- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code

§134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was five days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of five days results in an allowable amount of \$5,590.00.

- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

| Code | Itemized Statement Description | UNITS | Cost Per Unit               | Cost + 10%      |
|------|--------------------------------|-------|-----------------------------|-----------------|
| 0278 | Hole Cover                     | 1     | No support for cost/invoice | \$0.00          |
| 0278 | Cerclage Pin                   | 1     | \$119.97                    | \$131.97        |
| 0278 | Cable w/Crimp                  | 1     | \$390.60                    | \$492.66        |
| 0278 | Hip Stem SZ 13                 | 1     | No support for cost/invoice | \$0.00          |
| 0278 | Femoral Head 12/14 36M         | 1     | No support for cost/invoice | \$0.00          |
|      |                                |       | <b>TOTAL ALLOWABLE</b>      | <b>\$561.63</b> |

The total reimbursement set out in the applicable portions of (c) results in \$5,590.00 + \$561.63, for a total of \$6,151.63.

Reimbursement for the services in dispute is therefore determined by the lesser of:

| §134.401(b)(2)(A) | Finding        |
|-------------------|----------------|
| (i)               | Not Applicable |
| (ii)              | \$84,912.71    |
| (iii)             | \$6,151.63     |

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$18,552.71. Based upon the documentation submitted, no additional reimbursement can be recommended.

## **Conclusion**

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor’s Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### Authorized Signature

|           |  |            |
|-----------|--|------------|
| _____     | _____                                  | 04/05/2013 |
| Signature | Medical Fee Dispute Resolution Officer | Date       |

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**